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July 6, 2020

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Re: ***In re: Valsartan, Losartan, and Irbesartan Products Liability Litigation.*****, U.S. District Court for the District of New Jersey; Case No. 1:19-md-02875-RBK-JS**

Dear Counsel:

As we mentioned in our July 1, 2020 letter, Defendants Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis LLC, Actavis Pharma, Inc., and Arrow Pharm (Malta) Ltd. (collectively, "the **Teva Defendants**") are utilizing a continuous multi-modal learning ("**CMML**") platform to assist Defendants with review and production of the Teva Defendants' electronically stored information ("**ESI**"). In that same letter, we also made clear that, at this point, the Teva Defendants are simply utilizing CMML to prioritize the documents to be reviewed and that we would inform Plaintiffs if there is ultimately a population of documents we do not intend to review. Put differently, the Teva Defendants are currently reviewing all documents if or until the CMML platform indicates such review would no longer be efficient and/or reasonable.

We were therefore surprised to learn that Plaintiffs "do not agree to Teva's proposal to use CMML for review and production of documents…." Our intention in providing you with this information was simply to provide transparency and to cooperate in good faith, not to invite a dispute. As the ESI protocol makes clear, Defendants do not require Plaintiffs' consent or approval as to their chosen review processes or platforms. Instead, the ESI protocol merely requires that the use of "TAR/predictive coding" be disclosed to Plaintiffs, and that the parties meet and confer to discuss "post-searching error sampling and sampling/testing reports." (Dkt. 127, ¶ II).

It is well-established that "responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for producing their own electronically stored information." *In re Mercedes-Benz Emissions Litigation* [sic], 2020 WL 103975, at *1 (D. N.J. Jan. 9, 2020) (citing *Hyles v. New York City*, 2016 WL 4077114, at *2 (S.D.N.Y. Aug. 1, 2016); The Sedona Principles: Second Edition, Best Practices Recommendations & Principles for Addressing Electronic Document Production, Principle 6 (available at www.TheSedonaConference.org).[1] Moreover, it is black letter law that where the producing party seeks to utilize technology to assist with its review of documents, courts will permit it. *See Rio Tinto PLC v. Vale S.A.,* 306 F.R.D. 125, 127 (S.D.N.Y. Mar. 2, 2015).

Regardless, in the spirit of cooperation, the Teva Defendants are willing to meet and confer this week in order to explain to Plaintiffs the methodology we are using to review and produce ESI. The Teva Defendants will also ask that a CMML expert from our vendor, Consilio, join the meet and confer in order to describe the CMML technology. We are confident that, upon learning about the technology, Plaintiffs will be reassured about the Teva Defendants' approach in discovery and neither party will need to burden the Court with further ESI related disputes.

Please let us know your availability for a meet and confer telephone conference tomorrow, July 7th.

Very truly yours,

/s/ Brian H. Rubenstein
Brian H. Rubenstein, Esq.
Attorney for Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis LLC, and Actavis Pharma, Inc.

[1] Numerous courts have endorsed the use of technology in the development of reasonable and defensible search and review protocols.

cc: Jessica Priselac, Esq. (*via email, for distribution to Defendants' Counsel*)
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